

## HIPAA County Issues Work Group

Adult Protective Services

Child Welfare Services

In-Home Supportive Services

### **DRAFT DISCUSSION PAPER**

### **For 12/17/01 HIPAA County Issues Work Group**

Note: The following discussion looks at key questions to ask in determining whether a social service program is required to comply with HIPAA. It then applies those questions to APS, CWS, and IHSS. The conclusion regarding IHSS differs from that discussed at our last meeting on 11/26/01. I am still researching the Title XIX finding used to support these programs but believe that this is not a critical point in developing a conclusion.

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### **Key Questions**

The following series of key questions need to be answered for each social service program to determine if it is subject to HIPAA requirements:

- A. Is the program a "health plan" as defined in HIPAA?  
Section 1171(5) defines a health plan as "an individual plan or group plan that provides, or pays the cost of, medical care."

To determine if a social service program meets this definition, the following questions need to be asked:

1. Is health care the primary function of the program?
2. If not, is Medicaid Title XIX funding used to support the program?
3. If Title XIX funding is used, are the services provided considered "health care services" under HIPAA?

Note: The critical issue is what service is provided rather than who provides the service (i.e. a Public Health Nurse or Social Worker or IHSS provider).

4. If yes, are the health care services ones that use one or more of the nine standard codes under HIPAA?
5. If yes, does the program fit into one of the exemptions?

- B. Is the program a “health care provider” as defined in HIPAA?  
HIPAA defines a health care provider as any of a medical or health services and supplies listed in the act.

To determine if a social service program meets this definition, the following questions need to be asked:

1. Is health care the primary function of the program?
2. If not, are the services provided considered “health care services” under HIPAA?

Note: The critical issue is what service is provided rather than who provides the service (i.e. a Public Health Nurse or Social Worker or IHSS provider).

3. If yes, are the health care services ones that use one or more of the nine standard codes under HIPAA?
4. If yes, does the program fit into one of the exemptions?

- C. Does the program function as a “healthcare clearinghouse” as defined in HIPAA?

HIPAA defines a health care clearinghouse as an entity that receives health information from another entity and processes that information to send to another entity.

To determine if a social service program meets this definition, the following questions need to be asked:

1. Does the program receive and transmit health care information from one entity to another?
2. If yes, does the program receive and transmit one or more of the nine standard transaction codes under HIPAA?

## **Implications for APS, CWS, and IHSS**

### **Adult Protective Services**

The primary purpose of the Adult Protective Services (APS) program is not health care. It is intended to protect vulnerable adults from abuse, neglect, and exploitation. Title XIX funds are used to partially support these services. They fund health related activities such as referral to medical services and transportation to doctor’s appointments. I believe that CDSS claims these costs as administrative expenditure rather than a health care service under Medicaid. In addition, the services provided do not clearly fall under the HIPAA definitions of a health service. The closest possibilities are the needs assessment and case management activities. The focus of the needs assessment is on determining the client’s safety and ability to live independently rather than on determining

their medical status and needs. Case management efforts encompass obtaining needed health and human services for the client, following-up to assure that those services are provided, and assessing the client's on-going progress. The social service focus of these tasks distinguish them from the medical assessment and case management services referenced in HIPAA. Further, a medical professional must perform neither activity. Either a Social Worker or a Public Health Nurse may perform both. Some counties may utilize Public Health Nurses to perform activities that do fall within HIPAA. An example is giving flu inoculations. In these cases, counties will need to assure that HIPAA regulations are followed regarding those activities. If there is a need to share this information with other APS staff members, an authorization must be obtained from the client. None of the services provided are claimed using a HIPAA required transaction code. APS does not function as a clearinghouse.

Conclusion - APS is not a covered service. However, medical services provided within APS by a health professional are subject to HIPAA if they fall within one of the nine standard transaction codes.

### **Child Welfare Services**

The primary purpose of the Child Welfare Services (CWS) program is not health care. The mission of CWS is to protect children from abuse, neglect and exploitation. Title XIX funds are used to partially support these services. They fund health related activities such as referral to medical services and transportation to doctor's appointments. I believe that CDSS claims these costs as administrative expenditure rather than a health care service under Medicaid. In addition, the services provided do not clearly fall under the HIPAA definitions of a health service. The closest possibilities are the needs assessment and case management activities. The focus of the needs assessment is on determining the child's safety and well-being rather than on determining their medical status and needs. Case management efforts encompass obtaining needed health and human services for the child and their family, following-up to assure that those services are provided, and assessing on-going progress. The social service focus of these tasks distinguish them from the medical assessment and case management services referenced in HIPAA. Further, a medical professional must perform neither activity. Either a Social Worker or a Public Health Nurse may perform both. Some counties may utilize Public Health Nurses to perform activities that do fall within HIPAA. An example is administering immunizations. In these cases, counties will need to assure that HIPAA regulations are followed regarding those activities. Compliance with this requirement is facilitated by a specific HIPAA exemption. Section 164.512(b)(1)(ii) permits medical entities, which are subject to HIPAA, to health information to government authorities authorized by law to receive reports of child abuse or neglect. Consequently a specific authorization will not be needed. None of the services provided are

claimed using a HIPAA required transaction code. CWS does not function as a clearinghouse.

Conclusion - CWS is not a covered service. However, medical services provided within CWS by a health professional are subject to HIPAA if they fall within one of the nine standard transaction codes.

### **In-Home Supportive Services**

In-Home Supportive Services (IHSS) is comprised of two components, the IHSS Residual Program and the Personal Care Services Program (PCSP). The primary purpose of both is not health care. Instead IHSS is intended to provide chore services that allow a client to remain in their home. Care includes assistance with daily living activities such as laundry, house cleaning, shopping, cooking, and bathing and paramedical services such as catheter care, insulin shots, and home dialysis. Title XIX funds are used to partially support these services. I believe that CDSS claims these costs as administrative expenditures rather than services. In addition, the services provided do not clearly fall under the HIPAA definitions of a health service. The closest possibilities are the needs assessment, case management activities, and paramedical services. The focus of the needs assessment is on determining the client's eligibility for services and the number of hours of chore services to which the client is entitled. This is an eligibility function specifically exempt from HIPAA. In addition, this activity focuses on income, property, and the client's ability to perform daily living tasks rather than their medical needs. The case management function has a social service focus assuring that referrals are made to needed health and human services and that IHSS services are provided. The social service focus of these tasks distinguish them from the medical assessment and case management services referenced in HIPAA. Further, a medical professional must perform none of these activities. Likewise, the paramedical services do not require a medical professional to administer them. They can be performed by anyone (the client, a family member or a IHSS provider) with minimal training from a medical professional. Some counties may utilize Public Health Nurses to perform activities that do fall within HIPAA. An example is giving flu inoculations. In these cases, counties will need to assure that HIPAA regulations are followed regarding those activities. If there is a need to share this information with other IHSS staff members, an authorization must be obtained from the client. None of the services provided are claimed using a HIPAA required transaction code. IHSS does not function as a clearinghouse.

Conclusion - IHSS is not a covered service. However, medical services provided within IHSS by a health professional are subject to HIPAA if they fall within one of the nine standard transaction codes.

**Additional Note**

I understand that a number of counties are considering making a policy determination that defines a broad number of programs as covered entities. I am wondering if there isn't another way to protect the county from liability. A county policy setting confidentiality standards that use HIPAA as a guide may accomplish the same result without impacting automation systems or potentially subjecting the county to a more stringent standard.

I'm not aware of anyone who has been able to undertake the work of determining if HIPAA Confidentiality rules are more or less rigorous than current federal and California law. If they are more rigorous, a declaration that a function is a covered entity under HIPAA would subject that county to a tougher legal test than would be applied if the function could have been defined as falling outside of HIPAA. A county policy to use HIPAA standards as a guide in setting local confidentiality could provide the same protection without the same liability risk.

I do believe that all of the automation systems, which support the social services functions, can meet the proposed HIPAA security standards. Retrofitting those systems would be expensive, drawing scarce resources away from other needed programmatic and automation priorities.